IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 2891 OF 2005

SMT. AMINA SAYYED .. PETITIONER

Vs.

LAL BAHADUR RAJNARAYAN YADAV .. RESPONDENT

Mr. P. K. Dhakephalkar with N. P. Shimpi for petitioner

Mr. Mr. S. P. Patankar for respondent

CORAM:-SMT. RANJANA DESAI, J.

DATED:-4-5-2005

P.C.

The petitioner is the original licensee. The respondent filed an application for eviction of the petitioner from the suit premises under Section 24 of the Maharashtra Rent Control Act, 1999. The case of the respondent is that he is the owner of the suit premises being Room No. 2, Chawl No. 3, Matoshree Chawl, New Link Road, Opp. Air India Bldg., Behrambaug,

Jogeshwari (W) Mumbai ("the suit premises" for short) and the petitoner is the licensee.

2. The suit premises were given to the petitioner for eleven months on leave and licence basis from 20/7/1999 to 19/6/2000, on monthly compensation of Rs.700/-. The agreement to that effect was executed between them on 20/7/99. The licence period expired on 19/6/2000, however the petitioner failed to vacate the suit premises. Therefore, notice was sent by the respondent through his advocate on 10/7/2000. The petitioner refused to vacate. Hence the application was filed before the competent authority under Maharashtra Rent Control Act, Konkan Division, Mumbai, for the eviction of the petitioner.

3. The petitioner filed her written statement alleging that there is no licensor licensee relationship between them. She contended that the number of the room in her occupation is 3 and not 2 and the said room is situated in Zaibunissa Chawl, Anand Nagar, Link Road, Jogeshwari (W). She further contended that one Mrs. Shehnaz Shaikh was the owner of room No. 3 in Zaibunissa chawl and she purchased the same from Mrs. Shehnaz Shaikh and since then she is residing in the said room along with her family. In short it is her case that she has nothing to do with the premises in Matoshree chawl. She has denied that she had executed leave and licence agreement dated 20/7/99. According to her the said document is

fabricated. She denied her signature.

4. The competent Authority by its order dated 15/6/04 held that the licensor and licensee relationship is proved and that the respondent was entitled to recover the suit premises. The competent authority, therefore, directed the petitoner to handover possession of the suit premises. The petitioner carried a revision before the Additional Commissioner, Konkan Division, Mumbai. The same came to be dismissed and hence this writ petition.
5. I have heard at length Mr. Dhakephalkar, the learned counsel appearing for the petitioner.
6. Though the application is filed under Section 24 of the Maharashtra Rent Control Act, the leave and licence agreement is of July 1999. The said Act came into force on 10/3/2000 and, therefore, admittedly the proceedings would be governed by The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (“The Bombay Rent Act” for short).
7. Mr. Dhakephalkar contended that the petitioner has denied her signature on the leave and licence agreement. It is her contention that the leave and licence agreement is fabricated. He submitted that it was wrong on the part of the courts below to rely on the handwriting expert's evidence and hold that the signature is that of the petitioner. The learned counsel contended that the handwriting expert's opinion is a weak type of

evidence. It is not conclusive. It is opinion evidence. Therefore, some corroboration is necessary. In this connection he relied on **S. Gopal Reddy v. State of A.P., AIR 1996 S C 2184** . The learned counsel contended that the handwriting expert should have been examined. The petitioner could have cross-examined the handwriting expert. The learned counsel further urged that it is the case of the petitioner that she is in fact residing in Zaibunisa Chawl. She has produced ration card where her address is shown as Zaibunisa Chawl, Room No. 3. She has also produced electricity bills. On the electricity bill her address is shown as Room No. 3, Zaibunisa Chawl. Therefore, the case that she has stays in Matoshree Chawl is false. The learned counsel urged that the courts below erred in relying on N C complaints filed by the petitioner. He, therefore, submitted that the impugned orders deserve to be set aside.

8. I am unable to agree with the learned counsel. The leave and licence agreement was annexed by the respondent to the application and it is on record. In this connection it is pertinent to refer to Section 13A 2 of the Bombay Rent Act and more particularly to sub-clause (b) of the explanation. I may quote the relevant provision.

"13A2. . . . . .

(1) Notwithstanding anything contained in this Act, a

licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the licensed premises, a landlord shall be entitled to recover possession for such premises from a licensee, on the expiry of the period of licence by making an application to the Competent Authority; and the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.

(2) . . . . .

(3) . . . . .

Explanation:- For the purposes of this section, -

(a) . . . . .

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

9. Therefore, as per clause (b) of the explanation once an agreement of leave and licence in writing is on record, it is conclusive evidence of the facts stated therein and it is not open to the parties to adduce evidence as regards contents of the said agreement. Sofar as the claim of the petitioner that she has not signed the leave and licence agreement is concerned, in

my opinion, that has rightly been rejected by the courts below. Handwriting expert has opined that the signature on the leave and licence agreement is that of the petitioner. It is true that handwriting expert's evidence being not conclusive it needs corroboration. In this case apart from handwriting expert's evidence there are N C complaints lodged by the petitioner. Certified copies of the same are on record and in those N C complaints the petitioner has shown her address as Matoshree chawl. These complaints cannot be dismissed as innocuous documents. The required corroboration to the handwriting expert's evidence is found in these complaints.

10. In **S. Gopal Reddy's case (supra)**, on which reliance is placed, the Supreme Court was dealing with a prosecution under Section 4 of the Dowry Prohibition Act, 1961. The complainant had alleged that several letters were written by the accused regarding fulfilment of dowry demand. The court was dealing with certain letters written by the accused, the authorship of which was denied by the accused. According to the handwriting expert's opinion, there were similarities between the handwriting contained in these letters and specimen signatures of the accused. While considering this opinion, the Supreme Court observed that handwriting expert's evidence is not conclusive evidence and it is not safe to rely on it without seeking independent and reliable corroboration. There

can be no dispute about this proposition. But as I have already observed the N C complaints provide the necessary corroboration to the handwriting expert's evidence.

11. In my opinion, judgment in **S Gopal Reddy's case (supra)** is not applicable to the present case as it pertains to a criminal case. In a criminal case proof beyond reasonable doubt is the rule Proceedings under Section 13A 2 of the Bombay Rent Act cannot be equated with a criminal case. They are intended to provide speedy relief to the licensor. That is why an agreement of licence in writing is conclusive evidence of the facts stated therein. Therefore, handwriting expert's evidence corroborated by N C complaints are sufficient to uphold the respondent's case. It was not necessary to examine the handwriting expert.

12. So far as electricity bills and ration card showing the petitioner's address as Zaibunnisa Chawl are concerned they have no relevance to the present case. If the petitioner is in possession of some other premises that need not be considered here. The present proceedings pertain to premises in Matoshree chawl and the petitioner has shown them as her residential premises in the complaints lodged by her. This speaks volumes. Morever, if the petitioner had no concern with the suit premises, she had no reason to prosecute the present proceedings. I may also note that the learned counsel for the respondent has stated that the respondent does not own any

premises known as Zaibunnisa Chawl.

13. In the circumstances, I find no reason to disturb the unassailable concurrent finding of fact.

14. The petition is rejected.

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